

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 ROBIN BRUINS and BEVERLY
5 BRUINS,

6 Plaintiffs,

7 v.

8 DENNIS OSBORN, *et al.*,

9 Defendants.

Case No. 2:15-cv-00324-APG-VCF

**ORDER DENYING MOTION TO
RECONSIDER**

(ECF No. 69)

10 Plaintiffs Robin and Beverly Bruins filed this lawsuit against various law enforcement
11 officers who conducted a traffic stop, detained and searched the Bruins and their car, and then
12 arrested Robin for possession of a stolen vehicle. I previously granted summary judgment in the
13 defendants' favor on various claims because the officers had probable cause to detain and arrest
14 Robin. ECF No. 41. Nearly a year and a half later, the Bruins seek reconsideration of that order
15 based on allegedly new information obtained through discovery. The defendants oppose
16 reconsideration, arguing the Bruins' motion is untimely and prejudicial.

17 The parties are familiar with the facts and I previously detailed the factual background in
18 my prior order. *Id.* I therefore do not repeat them here except where necessary. I deny the
19 motion to reconsider.

20 **I. ANALYSIS**

21 A district court "possesses the inherent procedural power to reconsider, rescind, or modify
22 an interlocutory order for cause seen by it to be sufficient" so long as it has jurisdiction. *City of*
23 *L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (quotation and
24 emphasis omitted); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1,
25 12 (1983) (citing Fed. R. Civ. P. 54(b)). "Reconsideration is appropriate if the district court (1) is
26 presented with newly discovered evidence, (2) committed clear error or the initial decision was
27 manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J*,

1 *Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see also* LR 59-1(a). A
2 district court may also reconsider its decision if “other, highly unusual, circumstances” warrant it.
3 *Sch. Dist. No. 1J, Multnomah Cty., Or.*, 5 F.3d at 1263. However, motions for reconsideration are
4 “disfavored.” LR 59-1(b).

5 **A. The Plus Symbol**

6 The Bruins contend that discovery has revealed that the defendants submitted misleading
7 affidavits in support of the prior motion for summary judgment. In those affidavits, the
8 defendants attested that the officers had personal knowledge that dispatch cannot run license
9 plates with special symbols, such as a + symbol. The Bruins indicate they have since learned that
10 after the incident, dispatch ran Robin’s plate with the + symbol and the results returned with the
11 Bruins’ vehicle.

12 The newly submitted evidence does not support the conclusion that any of the troopers on
13 the scene made false or misleading statements in their affidavits. The witnesses testified that it
14 was their understanding from what dispatchers previously had told them or from their prior
15 experience that dispatch could not and would not run a plate number with a special symbol. *See*
16 ECF Nos. 70-1 at 23; 70-2 at 6, 23, 28-31. Some of them gave as an example the heart symbol
17 that California plates can display. *See* ECF Nos. 70-1 at 23-24; 70-2 at 28-31. Whether a
18 + symbol actually can be run does not alter the analysis of my prior order. There is no evidence
19 that, at the time of the incident in question, any of the troopers knew or believed that dispatch
20 could run a plate with the + symbol. Thus, even if they were mistaken about that fact, the mistake
21 was reasonable, given their knowledge and experience that special symbols could not and would
22 not be run by dispatch. The troopers therefore had probable cause or at least would be entitled to
23 qualified immunity.

24 **B. Candor to the Court**

25 Although I do not find a basis to reconsider my prior ruling, I am troubled by whether the
26 defendants’ prior counsel, Adam Honey, knew at the time the summary judgment motion was
27 filed that in fact dispatch could run the plate with the + symbol but did not disclose this to the
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1 Bruins or me. It appears that a few months after Robin's arrest, the plate was run with the
2 + symbol, and the return matched Robin's name and address. *See* ECF No. 74-1 at 22-25.
3 Defendant Osborn testified at his deposition that he provided that information to Honey shortly
4 after the lawsuit was filed. *See* ECF Nos. 70-2 at 5-6; 74-1 at 30. Yet the original summary
5 judgment motion makes no mention of this.

6 I am also concerned about what appears to be an inconsistency between defendant Arias's
7 April 1, 2014 post-arrest memorandum to the district attorney explaining why the charges against
8 Robin should be dismissed and his affidavit filed in support of the summary judgment motion.
9 ECF Nos. 22-1 at 55-57; 32-6. In the memorandum, Arias stated the plate needed to be run with
10 the + symbol "for the record to return for this vehicle." ECF No. 32-6. In his May 4, 2015
11 affidavit, Arias stated that after Robin's arrest, he learned that dispatch cannot run special
12 symbols such as + symbols. ECF No. 22-1 at 55-56.

13 In the opposition to the motion to reconsider, the defendants' current counsel did not
14 respond to the allegation that prior counsel and the witnesses misled the Bruins and me. My
15 order setting this motion for hearing directed counsel to "be prepared to discuss the circumstances
16 surrounding whether prior defense counsel Adam Honey and/or the defendants knew that the
17 Bruins' license plate could be run through the computer database with the '+ sign' prior to the
18 first motion for summary judgment and if so, why that information was not disclosed to either the
19 Bruins or the court." ECF No. 80. But at the hearing defense counsel was unprepared to explain
20 why this information was not previously disclosed. Consequently, I will order the defendants to
21 address: (1) whether the plate was run with the + symbol after Robin's arrest that returned a
22 match to Robin's name and address; (2) when that occurred and who performed the search; (3)
23 when each defendant learned of that fact (if ever);¹ (4) when that information was communicated
24 to defense counsel; (5) if that was communicated to defense counsel or any defendant before the
25 first motion for summary judgment was filed, explain why the motion states that the + symbol
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27 ¹ *See* ECF No. 70-2 at 30 (defendant Slattery denying he knew the plate was run with the
28 + symbol and came back with Robin's information).

1 cannot be run when counsel and/or defendants knew that it could be; and (6) explain the apparent
2 discrepancy between Arias's post-arrest memorandum and his later affidavit. Failure to
3 adequately respond may result in an order to show cause why sanctions should not issue against
4 the defendants and/or counsel.

5 **C. Knowledge Element**

6 The Bruins argue none of the troopers on the scene knew that the crime of possession of a
7 stolen vehicle requires proof that the accused knew or had reason to believe the car was stolen.
8 They thus contend the officers lacked probable cause to arrest. The officers' testimony that they
9 did not know about the offense's knowledge element does not alter my prior ruling. "Because the
10 probable cause standard is objective, probable cause supports an arrest so long as the arresting
11 officers had probable cause to arrest the suspect for any criminal offense, regardless of their
12 stated reason for the arrest." *United States v. Struckman*, 603 F.3d 731, 741 (9th Cir. 2010)
13 (quotation omitted). Thus, the fact that the officers did not know of the element does not negate
14 the fact that an objective evaluation of the facts known to the officers at the time supported
15 probable cause, including the knowledge element. *See* ECF No. 41 at 12-13.²

16 **D. Reasonable Investigation**

17 The Bruins contend the troopers did not conduct a reasonable investigation because they
18 did not contact the State of Washington to determine if the car was properly registered there, nor
19 did they contact Los Angeles County, the source of the stolen vehicle report.³ However, this is
20 not "new" evidence. The Bruins had access to the video of the incident. There was no indication
21 in the video that the troopers contacted anyone in Washington to verify the plates or to gain an
22 understanding of Washington law on classic plates. None of the defendants indicated in their
23 affidavits that they had done so. Consequently, the Bruins could and should have made these
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25 ² The Bruins argue that I based my prior probable cause analysis of the knowledge
26 element on the fact that Robin purchased the vehicle off of Craigslist. ECF No. 69 at 16-17. That
was not the entirety of my analysis. *See* ECF No. 41 at 12-13.

27 ³ There is evidence that Estes confirmed the stolen vehicle report with Los Angeles
28 County. ECF Nos. 22-1 at 15; 35-1 at 5.

1 arguments in response to the prior summary judgment motion. The Bruins did not request Rule
2 56(d) relief. They now seek to undo the law of this case on the eve of the close of discovery and
3 almost a year and a half after my ruling, based on an argument they could and should have made
4 originally. I therefore deny the motion to reconsider on the basis that the officers failed to
5 conduct a reasonable investigation by not contacting officials in Washington or Los Angeles.

6 **E. Discretionary Immunity for Estes**

7 The Bruins also argue that defendant Estes is not entitled to discretionary immunity
8 because she did not have discretion as to what information to convey to the officers on the scene.
9 Instead, she was supposed to provide the officers with all information in the NCIC bulletin and to
10 verify information with the trooper, such as the color, make, and year of the vehicle. The Bruins
11 rely on Estes's deposition testimony in which she states it was required for her to do so and she
12 had no discretion not to verify the information. *See* ECF No. 70-2 at 18. Although not attached to
13 the motion to reconsider, the plaintiffs point out in their opposition to the defendants' second
14 summary judgment motion that the Nevada Highway Patrol operating procedures handbook states
15 that after receiving an NCIC hit that is not an exact match, the dispatcher should give the
16 requesting officer "all the pertinent information from the NCIC response." ECF No. 77 at 46.

17 I deny reconsideration because even if I determined Estes is not entitled to discretionary
18 immunity, the negligence claims against her would be barred by the public duty doctrine. Nevada
19 Revised Statutes § 41.0336 codifies the common law public duty doctrine, which provides that
20 the police owe duties to the public generally, not to particular individuals. Under that provision, a
21 law enforcement agency and its officers are not liable for the officers' negligent acts or omissions
22 unless an exception applies. One exception is when the officer's conduct "affirmatively caused
23 the harm." Nev. Rev. Stat. § 41.0336(2). An officer affirmatively causes the harm if she "actively
24 create[s] a situation which leads directly to the damaging result." *Coty v. Washoe Cnty.*, 839 P.2d
25 97, 99 (Nev. 1992).

26 Because I decline to reconsider my prior ruling on probable cause, the only basis for the
27 remaining claims is the manner by which the Bruins were detained. Even if Estes would not be
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1 entitled to discretionary immunity, she did not affirmatively cause the harm of the officers' use of
2 force. The officers on the scene chose what level of force to use in response to Estes initiating the
3 felony warble tone. Consequently, the Bruins' negligence claims against Estes would be barred
4 by the public duty doctrine.

5 **II. CONCLUSION**

6 IT IS THEREFORE ORDERED that the plaintiffs' motion to reconsider (ECF No. 69) is
7 **DENIED.**

8 IT IS FURTHER ORDERED that on or before March 30, 2018, the defendants and their
9 counsel shall address, in writing and with supporting evidence, the following: (1) whether the
10 plate was run with the + symbol after Robin's arrest that returned a match to Robin's name and
11 address; (2) when that occurred and who performed the search; (3) when each defendant learned
12 of that fact (if ever); (4) when that information was communicated to defense counsel; (5) if that
13 was communicated to defense counsel or any defendant before the first motion for summary
14 judgment was filed, explain why the motion states that the + symbol cannot be run when counsel
15 and/or defendants knew that it could be; and (6) explain the apparent discrepancy between Arias's
16 post-arrest memorandum and his later affidavit. Failure to adequately respond may result in an
17 order to show cause why sanctions should not issue against the defendants and/or counsel.

18 DATED this 8th day of March, 2018.

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22 ANDREW P. GORDON
23 UNITED STATES DISTRICT JUDGE
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